AO 243 (Rev. 01/15)

MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court	District Northern
Name *(under which you were convicted)*: Ian Furminger	Docket or Case No.: 3:14-CR-00102-CRB
Place of Confinement: BOP	Prisoner No.: 19531-111
UNITED STATES OF AMERICA	V. Movant *(include name under which convicted)* Ian Furminger

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:

   United States District Court - Northern District of California
   450 Golden Gate Avenue
   San Francisco, CA 94102-3489

   (b) Criminal docket or case number (if you know): 3:14-CR-00102-CRB

FILED
APR 24 2017
SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

2. (a) Date of the judgment of conviction (if you know): 12/5/2014

   (b) Date of sentencing: 2/23/2015

3. Length of sentence: 41 months

4. Nature of crime (all counts):

   Count One: (Wire fraud, in violation of 18 U.S.C. Section 13431) (Text message from Vargas to Furminger - November 19, 2009).
   Count Two: (Wire fraud, in violation of 18 U.S.C. Section 1343) (Police Report, November 19, 2009).
   Count Five: (Conspiracy against Civil Rights, in violation of 18 U.S.C. Section 241).
   Count Six: (Conspiracy to Commit Theft Concerning a Federally Funded Program, in violation of 18 U.S.C. Section 371).

5. (a) What was your plea? (Check one)
   (1) Not guilty ☑ (2) Guilty ☐ (3) Nolo contendere (no contest) ☐

   (b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to?

   Not Applicable.

6. If you went to trial, what kind of trial did you have? (Check one) Jury ☑ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☑

8. Did you appeal from the judgment of conviction? Yes ☑ No ☐

9. If you did appeal, answer the following:

(a) Name of court: United States Court of Appeals for the Ninth Circuit

(b) Docket or case number (if you know): 15-10093

(c) Result: Denied

(d) Date of result (if you know): 6/3/2016

(e) Citation to the case (if you know): See case citation under each issue and denial.

(f) Grounds raised:

Abuse of the district court's discretion in not severing trial from other defendants.
Zaffro v. United States, 506 U.S. 534, 537 (1993)
Abuse of the district court's discretion in allowing admission of various prejudicial text messages.
United States v. Seschillie, 310 F.3d 1208, 1214 (9th Cir. 2002)
Faulty jury instruction regarding SFPD's Federally Funded Program status.
Jackson v. Virginia, 443 U.S. 307, 319 (1979)
Reduction in sentence due to minor participation and involvement in the crimes.
United States v. Klimavicius-Viloria, 144 F.3d 1249, 1267 (9th Cir. 1998)

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☑

If "Yes," answer the following:

(1) Docket or case number (if you know):

(2) Result:

(3) Date of result (if you know):

(4) Citation to the case (if you know):

(5) Grounds raised:

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☑ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: United States District Court, Northern District of California, San Francisco Division

(2) Docket or case number (if you know): CR-14-0102

(3) Date of filing (if you know): 1/16/2015

(4) Nature of the proceeding: Motion for a New Trial or Acquittal

(5) Grounds raised: The weight of the evidence does not support the verdicts.

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☑ No ☐

(7) Result: Denied

(8) Date of result (if you know): 2/18/2015

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court:

(2) Docket of case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☑ No ☐

(7) Result: Denied.

(8) Date of result (if you know):

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☑ No ☐

(2) Second petition: Yes ☐ No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not:

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Counsel failed to advocate defendant's theory of the case.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

1. Counsel did not allow me to testify on my own behalf, which resulted in witnesses not being called who could corrorborate my testimony.
2. Counsel did not intervene when full disclosure of my financial condition was not testified to by witness Stephanie Furminger.
3. Counsel was aware of my drinking disability and PTSD but did not raise either as possible defenses at trial.
4. Counsel drank alcoholic beverages and encouraged drinking at our pretrial lunch meetings despite his duty to advise me on strategy at trial.

*Please see attached declaration of Ian Furminger.

(b) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☑

(2) If you did not raise this issue in your direct appeal, explain why:

Against appellate counsel's advice.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☑

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND TWO: Counsel was ineffective in investigation and presentation of mitigating evidence and circumstances.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

1. Counsel did not allow me to testify on my own behalf, which resulted in witnesses not being called who could corrorborate my testimony.
2. Counsel did not intervene when full disclosure of my financial condition was not testified to by witness Stephanie Furminger.
3. Counsel was aware of my drinking disability and PTSD but did not raise either as possible defenses at trial.
4. Counsel drank alcoholic beverages and encouraged drinking at our pretrial lunch meetings despite his duty to advise me on strategy at trial.

*Please see attached declaration of Ian Furminger.

(b) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☑

(2) If you did not raise this issue in your direct appeal, explain why:

Against appellate counsel's advice.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☑

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: ______

Name and location of the court where the motion or petition was filed:

______

Docket or case number (if you know): ______

Date of the court's decision: ______

Result (attach a copy of the court's opinion or order, if available):

______

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

______

Docket or case number (if you know): ______

Date of the court's decision: ______

Result (attach a copy of the court's opinion or order, if available):

______

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

______

GROUND THREE: Counsel provided bad advice.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

1. Counsel did not allow me to testify on my own behalf, which resulted in witnesses not being called who could corrorborate my testimony.
2. Counsel did not intervene when full disclosure of my financial condition was not testified to by witness Stephanie Furminger.
3. Counsel was aware of my drinking disability and PTSD but did not raise either as possible defenses at trial.
4. Counsel drank alcoholic beverages and encouraged drinking at our pretrial lunch meetings despite his duty to advise me on strategy at trial.

(b) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☑

(2) If you did not raise this issue in your direct appeal, explain why:

Against appellate counsel's advice.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☑

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND FOUR: Counsel and I had irreconcilable differences.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

1. Counsel did not allow me to testify on my own behalf, which resulted in witnesses not being called who could corrorborate my testimony.
2. Counsel did not intervene when full disclosure of my financial condition was not testified to by witness Stephanie Furminger.
3. Counsel was aware of my drinking disability and PTSD but did not raise either as possible defenses at trial.
4. Counsel drank alcoholic beverages and encouraged drinking at our pretrial lunch meetings despite his duty to advise me on strategy at trial.

*Please see attached declaration of Ian Furminger.

(b) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☑

(2) If you did not raise this issue in your direct appeal, explain why:

Against appellate counsel's advice.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☑

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

Grounds One through Four were never presented in federal court. My appellate attorney, Mark Goldrosen, addressed procedural errors at trial. I am claiming ineffective assistance of counsel based on the grounds presented on this form and attached declaration, statement of facts with excerpts from trial transcripts.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☑

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the you are challenging:

(a) At the preliminary hearing:

(b) At the arraignment and plea:

(c) At the trial:
Brian Getz , Esq.; 201 California Street, Suite 450, San Francisco, CA 94111 (415) 912-5886

(d) At sentencing:

(e) On appeal:

(f) In any post-conviction proceeding:

(g) On appeal from any ruling against you in a post-conviction proceeding:

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☑ No ☐

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☑

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF MOTION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

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* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

(1) the date on which the judgment of conviction became final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;

(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief:

To vacate, set aside or correct sentence.

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on 04-21-2017.

(month, date, year)

Executed (signed) on 04-21-2017 (date)

Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.